

INSTRUCTIONS: HOW TO ASK THE COURT TO APPOINT A GUARDIAN FOR A MINOR WHO IS AN INDIAN CHILD¹

Introduction

The court may appoint a guardian for an unmarried minor child if all parental rights of custody have been terminated or suspended by circumstances or prior court order.²

The court may appoint as guardian any adult whose appointment would be in the best interests of the minor. An adult family member has priority.³ If the minor is age 14 or older, the minor may nominate who the minor wants as guardian.⁴ The court must appoint the person nominated by the minor unless the court finds it is contrary to the minor's best interests.

Note: If the minor will be 18 years old within 180 days (about 6 months), and you believe the minor will continue to need a guardian as an adult, file the petition for adult guardianship (form [PG-100](#)) instead of form PG-610. Instructions for the adult petition are in form [PG-505](#). An example of this situation is when a parent of a developmentally disabled child needs to continue to have guardian authority, because the child will not be able to take care of her/his own needs as an adult.

All of the forms in these instructions may be requested from your local court and are also available online: <http://www.courts.alaska.gov/forms/index.htm>.

Lawyers

Before starting this process, it may help to talk to a lawyer who is familiar with guardianship procedure. If you are unsure about whether you should hire a lawyer, many lawyers will do a free or low-cost consultation for a short period of time to help you decide if it is a good idea to have legal help in your case. If you do not know a lawyer, you can call or write to:

Lawyer Referral Service of the Alaska Bar Association
P.O. Box 100279
Anchorage, AK 99510-0279
Anchorage Phone: 272-0352
Statewide Phone: 800-770-9999 (toll free within Alaska)

Definitions of Some Terms Used in These Instructions⁵

Minor: A person who is under 18 years of age.⁶
Petitioner: The person who signs the petition asking the court to appoint a guardian.
Ward: A person who has a guardian appointed. (Thus, the "minor" is called a "ward" or "minor ward" after the judge appoints a guardian.)

¹ See definition of "Indian child" on page 3.

² AS 13.26.132.

³ "Adult family member" means "a person who is 18 years of age or older and who is (a) related to the child as the child's grandparent, aunt, uncle, or sibling; or (b) the child's sibling's legal guardian or parent." AS 47.10.990(1).

⁴ AS 13.26.143.

⁵ AS 13.26.005.

⁶ AS 13.06.050(31).

HOW TO FILE

Step 1. Fill out the *Petition* form ([PG-610](#)).

If you are asking for guardianship of more than one child, fill out a separate petition for each child. Fill in the top of the form as shown below:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT <u>[Fill in City where Court is Located]</u>	
In the Matter of the Protective Proceeding of)
)
)
)
<u>[Fill in Name of Child Needing a Guardian]</u>)
Minor)
Date of Birth: <u>[Fill in Child's Birthdate]</u>)
	CASE NO. <u>[Leave Blank for Court to Fill in]</u>
	PETITION FOR APPOINTMENT OF A GUARDIAN FOR A MINOR

Type or print clearly, using black ink.

- a. Section 1 is where you explain the legal basis (known as “venue”) for filing in a certain court location. If there is no open Child in Need of Aid (CINA) case involving the minor, you must file at a court in the same judicial district where the minor lives or is physically located at the time you file.

If there is an open CINA court case, you must file the petition in the same court location where the CINA case was filed, or you can file at any court in the judicial district where you live, but only if no party in the CINA case objects to this.

A list of superior court filing locations is on page 11. You can find a list of which courts are in which judicial district here:

http://www.courts.alaska.gov/court_dir/index.htm#trial

- b. Parent’s Rights

In sections 3 and 4 explain how each parent’s rights of custody have been “terminated” or “suspended by court order” or “suspended by circumstances.”

Terminated means a court has entered a written order ending the person’s parental rights concerning the child.

Suspended by court order means the court has suspended the parent’s right to have custody. For example, this often happens in a CINA case, when the court gives temporary custody of the child to the state.

Suspended by circumstances means that the parents are unable to provide care and supervision for the child on a day-to-day basis and perform normal parenting duties.

If “suspended by circumstances” is the reason a guardian is needed, you must explain in sections 3 and 4 what those circumstances are. **You must give enough details for the judge to understand the situation.**

If you are alleging that parental rights are suspended by circumstances other than the death of the parent(s), then the living parent(s) will need to consent to the guardianship (see Step 4 on page 6 of these instructions). If either or both of the parents do not consent, you may have to file a case in regular domestic relations (child custody) court. This situation can be very complicated, and you may want to talk to a lawyer about your options. You can find more information about filing for custody here: <http://courts.alaska.gov/shc/family/selfhelp.htm>.

c. **Indian Child**

In section 6, you must state whether the minor is “an Indian child as defined by the Indian Child Welfare Act.” The Indian Child Welfare Act (ICWA) is a federal law that requires special procedures whenever the court is deciding guardianship of an Indian child. ICWA includes the following definitions:⁷

Indian child means any unmarried person who is under the age of 18 and who is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43.

There are over 200 Alaska tribes, mostly Native villages. If the minor, or any of the minor’s parents or grandparents, was born in a village, the minor might qualify for tribal membership. Ask the minor, the parents, and (if necessary) other relatives about this.

If you need help determining whether a minor qualifies as an "Indian child" under ICWA, you may be able to get help from the tribe you think the minor might belong to.

The federal Bureau of Indian Affairs (BIA) publishes an updated list of the tribes every year in the Federal Register. The list includes the name, address, and telephone number of a contact person for each tribe. You can get the list on the BIA website: <https://www.bia.gov/bia/ois/dhs/icwa/agents-listing/>.

You can also call the Juneau office of the BIA and ask for assistance (1-800-645-8397, press 2 for "Tribal Enrollment," then press 6 to speak to the ICWA child welfare social worker). You will need to give them the names and dates of birth of the minor’s parents and, if possible, the minor’s grandparents.

- d. Check the box at the beginning of section 8 if both parents are dead. Then check one of the two boxes below to state whether the last surviving parent left a will that appoints a guardian for the child.

⁷ 25 USC § 1903.

If there **is** a will appointing a guardian, check one of the next two boxes explaining why the appointed guardian cannot be the guardian.

(1) **The guardian has not accepted the appointment.**

Alaska statutes require a guardian appointed by will to file a written acceptance of the appointment in the court where the will is probated.⁸ If that person has not accepted the appointment, and you want a different person appointed guardian, you must notify the person appointed in the will that you are filing this petition.⁹ You can do this by sending the person a letter. Example:

<p><i>Name & Address of Person Appointed Guardian in Will</i></p> <p>Dear <i>(name of guardian appointed in will)</i>,</p> <p>You were nominated in the will of <i>(name of parent)</i> to be the guardian of <i>(his)/(her)</i> child, <i>(minor's name)</i>. The parent has died, and you have not agreed to be the guardian. So, I am filing a petition in the Superior Court at <i>(court address)</i>, asking the court to appoint <i>(me)/(name of nominated guardian)</i> as guardian for this minor child. If you object to my petition, you must notify the court in writing within 30 days.</p> <p><u><i>Your Signature</i></u> <i>Your Name (printed or typed)</i> <i>Your Address</i></p>	<p>Date: _____</p>
---	--------------------

You must file a copy of this letter with the court. On a separate sheet of paper, write out a certificate of service and attach it to the court's copy. Example:

<p style="text-align: center;">Certificate of Service</p> <p>Case No. <i>(write the case number if one has been assigned)</i> In the Matter of the Protective Proceeding of <i>(minor's name)</i>, Minor</p> <p>I certify that I mailed the original of the attached letter to <i>(name of person)</i> on <i>(date)</i> by first class mail.</p> <p><u><i>(Your Signature)</i></u> <i>(Print your Name)</i></p>

Keep a copy of both the letter and the certificate of service for yourself.

⁸ AS 13.26.121 and Probate Rule 15.1.

⁹ AS 13.26.132.

Step 4. Parent’s Consent (form [PG-615](#)).

If either or both of the minor’s parents are alive, and there is no court order terminating or suspending the parent’s right to have custody of the minor child, then the court can only appoint a guardian if that parent’s rights of custody have been suspended by circumstances (see definitions on page 2 of these instructions).

If a parent agrees that the parent’s own rights have been suspended by circumstances, and agrees that a guardian needs to be appointed, the parent must consent **in writing and in the presence of a judge or magistrate**.¹⁰ Also, the parent(s) may not consent to guardianship until the minor child is at least 10 days old. The parent may read and fill out form [PG-615](#), *Parent’s Consent*, ahead of time, but must wait to sign it until the court hearing. If, for any reason, the parent cannot attend the court hearing to do this, you should contact the court for further instructions.¹¹

You will need a separate written consent from each parent if both are living and their custodial rights have not been terminated or suspended by court order.

Step 5. Make a copy of the *Petition, Child Custody Jurisdiction Affidavit, Acceptance of Appointment, and Parent’s Consent* forms for yourself.

You will also need one copy of the *Petition* for each person that must be notified of the court case (see Step 8 on the next page).

Step 6. File the original *Petition, Child Custody Jurisdiction Affidavit, and Acceptance of Appointment* forms and pay the filing fee according to [Administrative Rule 9\(b\)\(2\)\(G\)](#).

You can deliver these documents to the court in person or mail them along with the filing fee. If you cannot afford this fee, fill out form [TF-920](#), *Request for Exemption from Payment of Fees*. If you are petitioning for guardianship of more than one minor at the same time, you only have to pay one filing fee, even though you must file a separate petition for each minor.

If you change your address, email, or phone number after you file the petition and before the court hearing, you must notify the court. You can use form [PG-195](#), *Notice of Change of Contact Information*, to do this.

Step 7. Scheduling of Court Hearing.

The court clerk will give or mail you a *Notice of Hearing* telling you the time and place of your hearing and the name of the judge or master who will hear the case.

¹⁰ Signing in the presence of a judicial officer is a special requirement of ICWA. This is true even if the consenting parent is not a member of an Indian tribe, as long as the minor child is an “Indian child” from either side of the family. ICWA also requires the judge to explain the terms and consequences of the consent. 25 USC § 1913(a).

¹¹ If there is an open CINA case, this may be done during a CINA hearing. In other situations, you may be able to schedule a special hearing or meeting with the judge to do this.

Step 8. Notifying Others (forms [PG-616](#), [PG-621](#), [PG-622](#), and [PG-623](#)).

As the petitioner, it is your responsibility to notify certain other people about the hearing. Read page 1 of form [PG-621](#), *Notice of Guardianship Hearing for Indian Child*, for information about the rights of the parents, the minor's tribe, and the minor's Indian custodian (if there is one) in this matter. When you receive the notice in Step 7, do the following as soon as possible:

- a. On page 1 of form PG-621, fill in the top of the form the same as you did on the petition, but also add the case number. Fill in all of the information about the hearing (from the notice the court gave you in Step 7) and the court telephone number (see list of court telephone numbers on page 11).
- b. On page 2 of form PG-621, fill in as much information as you can. This information is needed in order to determine the minor's tribe. Sign and date the form.
- c. On page 3 of form PG-621, check the box in front of each paragraph that applies.
 - Check box #1 if the minor is age 14 or older. If the minor is younger, do not check this box.
 - Check boxes #2 and #3 (parents) if the parents are living and have not signed a "waiver of notice."¹²

Remember: A parent who consents to the guardianship must ordinarily attend the court hearing so the parent can sign the consent in front of the judge (see Step 4 on page 6), unless the consent and waiver of notice was already signed at a previous court hearing. Parents may also sign a waiver of notice (and not attend the hearing) if their parental rights were terminated or suspended by court order. If you have any doubts about whether a waiver of notice is valid, you should go ahead and serve the notice.
 - If the minor has an "Indian custodian," check box #4. **Indian custodian** is defined in ICWA as "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child."¹³ If the Indian custodian is you, do not check this box.
 - Check box #5, unless this person is you (the petitioner), the Indian custodian, or a parent of the minor.
 - If you are proposing (nominating) a guardian other than yourself or one of the people already included above, then check box #6.

For each box #1-6 that you checked above, fill in the person's name and how you will give the notice to that person. If you plan to hand-deliver the notice, be sure to write the name of the person who will be doing the delivery

¹² AS 13.06.115.

¹³ 25 USC § 1903(6).

- d. On page 3 of form PG-621, check the seventh box (concerning the tribe). Then check whichever of the three subparagraphs applies:
- **First Box.** To give notice to the tribe, send the notice of hearing to the contact person for the tribe listed in the BIA list of tribes described in paragraph c on page 3. If it is possible that the minor is eligible for membership in more than one tribe, you must send the notice to all the possible tribes.
 - **Second Box.** You must send the notice to the minor's tribe unless the minor's parents (1) agree in writing to the guardianship, and (2) file a statement that the tribe has not been served with notice in order to protect the privacy of the parents.¹⁴ See Step Four on page 6 for information on fulfilling the first requirement. Form [PG-616](#) may be used to fulfill the second requirement (the notice waiver does not need to be signed in front of a judge). The parent may fill out form PG-616 ahead of time and give it to you to file with the case, or file it after the case is opened.
 - **Third Box.** If you have reason to believe that the minor is an Indian child, but you cannot determine the minor's tribe, check the third box and mail (by certified mail) a copy of the petition, your notice (form PG-621), and form [PG-622](#), *Request to BIA*, to the BIA address at the top of form PG-622.
- e. Sign the bottom of page 3 of form PG-621 and fill in your address, email, and telephone number.
- f. Make a copy of the PG-621 you filled out and the petition you already filed for each person and tribe you are giving the notice to. Send a copy of both of these documents to every person and tribe you checked a box for on page 3 of the PG-621 form. You must do this at least 14 days before the hearing.¹⁵
- You must send the notices to the Indian custodian, the parents, the tribe(s), and the BIA by certified mail with return receipt requested. The notices to the parents and Indian custodian must also be sent "restricted delivery." Your local post office should be able to help you fill out the proper post office forms for these types of mail delivery.
- g. **Proof of Notice.** After you send these documents to everyone, file the original PG-621 form (with your original signature on page 3) with the court. You must file it before the hearing date or bring the original with you to the hearing. If anyone has signed a written waiver of notice, file or bring the original waiver along with your original form PG-621. Make a copy of form PG-621 to keep for yourself.

¹⁴ Probate Rule 15(b).

¹⁵ AS 13.06.110.

For each person or tribe¹⁶ that you used certified mail, fill out a separate form [PG-623](#), *Certificate of Service by Certified Mail*. Attach the original green card you got back from the Post Office, showing that the certified mail was delivered to the person you sent it to. File all of the original *Certificates* with the court. Keep a copy of each *Certificate* for yourself.

Step 9. Court Hearing.¹⁷

The hearing will probably happen between 30 to 90 days after you file your petition. The hearing will be before a judge or master. The minor has the right to be present at the hearing. Usually these hearings are closed to the public. The hearing will usually happen as follows:

- a. The judge will identify everyone present (for the hearing record).
- b. The judge will ask whether there are any disagreements about what should happen in the case.
- c. The judge may ask you questions about what you wrote in your petition. The judge may also ask if anyone in the courtroom objects to the guardian appointment.
- d. If there are disagreements, the judge may ask additional questions to clarify what the areas of disagreement are. If all parties do not agree, the judge may have to take evidence.
 - (1) You may be required to testify under oath and/or call witnesses to testify in support of your petition. You will have the burden of proving what you have said in your petition.
 - (2) The judge may have to postpone the hearing if it is going to take a long time to hear all the necessary testimony.
 - (3) The judge may order mediation under Probate Rule 4.5. (The court's order will provide details about the mediator and how mediation will be conducted and paid for.)

If the judge decides it is necessary to appoint a guardian, the judge may appoint any adult whose appointment would be in the best interests of the minor. Alaska statutes give priority to adult family members.¹⁸ "Adult family member" means a person who is at least 18 years of age and who is the minor's grandparent, aunt, uncle, or sibling; or the legal guardian or parent of the minor's sibling.¹⁹ Full-blood, half-blood, and adopted relatives are included equally in this definition.

Note: Section 1915(b) of ICWA establishes certain preferences for the placement of Indian children, beginning with "a member of the Indian child's extended family" (unless there is good cause not to do this).

¹⁶ And for service on the BIA, if applicable.

¹⁷ AS 13.26.147.

¹⁸ AS 13.26.143.

¹⁹ AS 47.10.990.

If the minor is 14 years of age or older, and the minor nominated someone to be guardian, the judge must honor the minor's nomination, unless the judge finds that it would be contrary to the minor's best interests. If necessary, the judge may appoint a temporary guardian for no more than six months.²⁰

At any time during the case, the judge can appoint an attorney for the minor. This may happen if the judge believes that additional help is needed to represent the minor's interests.²¹

Step 10. What Happens After a Guardian is Appointed.

a. Letters of Guardianship

After appointing the guardian and after the guardian has filed a written acceptance of the appointment (on form [PG-630](#)), the court will issue a document called *Letters of Guardianship of a Minor* (form [PG-635](#)). The guardian can get certified copies of this document from the court for proof of the guardianship and of the guardian's authority to make legal decisions on the minor's behalf (for example, at schools, hospitals, government agencies, etc.).

b. Annual Reports

Every year, for as long as the guardianship lasts, the guardian must file an *Annual Report on Guardianship of a Minor* ([PG-640](#)) with the court. The court's appointment order will tell you the date the report is due each year.

c. Change of Address

Any time the minor or the guardian changes name or contact information, the guardian must immediately send written notice to the court and all parties in the guardianship case.²² Use form [PG-195](#), *Notice of Change of Contact Information*, to do this.

d. Requests to Change the Guardianship

At any time, the guardian, the minor, or any other interested party may ask the court to remove the current guardian and appoint a new guardian, appoint a co-guardian, end the guardianship, or change the terms of the guardianship order. You may use form [PG-190](#), *Petition for Review of Guardianship or Conservatorship*, to ask the court to do this.

e. Termination of Guardianship

The guardianship will end when the minor turns age 18, is adopted, or is married (whichever happens first).²³ A guardian cannot simply stop performing the guardian's duties before one of these things happens. If the guardian believes the guardianship should end earlier, the guardian must first file a request with the court. You can use form [PG-190](#) to file the request to end the guardianship early. If granted, the court will issue a written order.

²⁰ AS 13.26.147(c).

²¹ AS 13.26.147(d).

²² Probate Rule 14(c).

²³ AS 13.26.171.

SUPERIOR COURT FILING LOCATIONS FOR GUARDIANSHIPS

ANCHORAGE:	Probate Office, 825 W. 4 th Ave., Anchorage, AK 99501-2004	(264-0433)
BETHEL:	Box 130, Bethel, AK 99559-0130	(543-2298)
CORDOVA:	PO Box 898, Cordova, AK 99574-0898	(424-7312)
DILLINGHAM:	PO Box 909, Dillingham, AK 99576-0909	(842-5215)
FAIRBANKS:	Probate Dept., 101 Lacey St., Fairbanks, AK 99701-4765	(452-9257)
GLENNALLEN:	PO Box 86, Glennallen, AK 99588-0086	(822-3405)
HOMER:	3670 Lake St., Bldg A, Homer, AK 99603-7686	(235-8171)
JUNEAU:	Box 114100, Juneau, AK 99811-4100	(463-4700)
KENAI:	125 Trading Bay Dr., Suite 100, Kenai, AK 99611-7717	(283-8535)
KETCHIKAN:	415 Main St., Rm 400, Ketchikan, AK 99901-6399	(225-3195)
KODIAK:	204 Mission Rd., Rm 124, Kodiak, AK 99615-7312	(486-1600)
KOTZEBUE:	PO Box 317, Kotzebue, AK 99752-0317	(442-3208)
NAKNEK:	PO Box 229, Naknek, AK 99633-0229	(246-4240)
NOME:	PO Box 1110, Nome, AK 99762-1110	(443-5216)
PALMER:	435 S. Denali St., Palmer, AK 99645-6437	(746-8181)
PETERSBURG:	Box 1009, Petersburg, AK 99833-1009	(772-3824)
SEWARD:	PO Box 1929, Seward, AK 99664-1929	(224-3075)
SITKA:	304 Lake St., Rm 203, Sitka, AK 99835-7759	(747-3291)
UNALASKA	PO Box 245, Unalaska, AK 99685-0245	(581-1266)
UTQIAGVIK: (Formerly BARROW)	Box 270, Utqiagvik, AK 99723-0270	(852-4800)
VALDEZ:	PO Box 127, Valdez, AK 99686-0127	(835-2266)
WRANGELL:	Box 869, Wrangell, AK 99929-0869	(874-2311)

If your nearest court is not on this list, check with that court to find out if a petition for appointment of a guardian can be filed there.

Costs in Minor Guardianship Proceedings

<u>Cost</u>	<u>Who Must Pay</u>
Filing Fee	The petitioner must pay the filing fee (unless the court waives the fee because the petitioner is indigent). ²⁴
Attorney for Petitioner	The petitioner must pay the attorney if the petitioner hires one. The petitioner is not required to have an attorney.
Attorney for Minor	If the court appoints an attorney for the minor, the court will pay for the attorney. ²⁵
Attorney for Parents	If the court finds that the parents are not financially able to pay for an attorney, the court can appoint an attorney to represent the parents, and the court will pay for the attorney. ²⁶

²⁴ Administrative Rule 9(b)(2)(G) and (f)(1).

²⁵ Administrative Rule 12(e)(1)(A)(ii)

²⁶ Administrative Rule 12(e)(1)(A)(ii)

Alaska Statute 13.26.167
Powers and Duties of Guardian of a Minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian

- (1) must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
- (2) may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship; the guardian also may receive money or property of the ward paid or delivered by virtue of AS 13.26.031; any sums so received shall be applied to the ward's current needs for support, care and education; the guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator; sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian; a guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;
- (3) may facilitate the ward's education, social, or other activities and authorize medical or other professional care, treatment, or advice; a guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented; a guardian may consent to the marriage or adoption of the ward;
- (4) must report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.